

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201601625	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/28/2016 4:44 AM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 8/28/2017	EO SOL 8/28/2017	
Date/Time CV Reported Mon, 02/29/2016 1:25 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Mon, 02/29/2016 3:56 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM William Schumacher	04618	949640	075 PCT
2. POM Robert Smith	06206	959414	075 PCT
3. POM Darrell Scraper	29011	948675	075 PCT
4. Officers			075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexis Yanez	23098	953586	075 PCT
2. SSA Robert Martinez	01369	922716	075 PCT
3. POM James Ruddy	20583	951184	075 PCT
4. POM Lee Bliss	19591	950087	075 PCT
5. POM Jonathan McMilleon	31712	935289	075 PCT
6. SGT Steven Siermala	5464	947491	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Smith	Abuse: Police Officer Robert Smith entered § 87(2)(b) in Brooklyn.	§ 87(4-b), § 87(2)(g)
B.POM Darrell Scraper	Abuse: Police Officer Darrell Scraper entered § 87(2)(b) in Brooklyn.	§ 87(4-b), § 87(2)(g)
C. Officers	Abuse: Officers forcibly removed § 87(2)(b) s to the hospital.	§ 87(4-b), § 87(2)(g)
D.POM William Schumacher	Force: Police Officer William Schumacher used physical force against § 87(2)(b)	§ 87(4-b), § 87(2)(g)
E.POM William Schumacher	Abuse: Police Officer William Schumacher attempted to interfere with § 87(2)(b) s use of a recording device.	§ 87(4-b), § 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(4-b), § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint at the 75th Precinct stationhouse on February 29, 2016. The CCRB received this complaint, via fax, on the same day. A duplicate IAB complaint was also generated and was received, under log number 2016-7509, on March 4, 2016.

On February 28, 2016, at approximately 3:25 a.m., § 87(2)(b) requested an ambulance to § 87(2)(b) in Brooklyn because her sister, § 87(2)(b) was in pain. After EMS responded to the location, they requested an RMP to the scene because § 87(2)(b) did not want to go to the hospital. At approximately 4:44 a.m., PO Robert Smith and PO Darrell Scrapper responded to the location and entered the apartment (**Allegations A and B**). PO Scrapper then placed § 87(2)(b) in handcuffs so that she could be transported to the hospital (**Allegations C**). Sometime after, additional officers responded to the location. While inside the residence, § 87(2)(b) wanted to record the incident, so her nephew § 87(2)(b) handed her a cellphone. As soon as PO William Schumacher, one of responding officers, observed that she was about to record, he allegedly grabbed § 87(2)(b) by the arms and pushed her, causing her to fall back, hit the back of her head against a stove, and lose consciousness (**Allegations D and E**). § 87(2)(b) and § 87(2)(b) were then transported to § 87(2)(b).

This case went over the 90-day benchmark due to various factors. First, § 87(2)(b) did not appear for an in-person interview until six weeks after she filed the complaint. Secondly, § 87(2)(b) named several potential witnesses and a potential victim during her interview, but she and her lawyer refused to provide any contact information for them, and therefore contact attempts, via information obtained from Lexis Nexis and CLEAR, needed to be exhausted before officers could be scheduled. Lastly, PO Scrapper missed three appointments due to conflicting court dates and vacation days.

§ 87(2)(b) alleged that there were photos and videos of the incident; however, she and her lawyer refused to provide the materials to the CCRB.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation because § 87(2)(b) filed a lawsuit related to this incident.
- § 87(2)(b)'s lawyer, § 87(2)(a) Gen.Mun. §50-H(3) filed a Notice of Claim against the City of New York on behalf of § 87(2)(b) alleging that she suffered “personal injuries based upon assault, battery, unlawful detention and imprisonment, intentional infliction of severe mental and emotional distress.” An inquiry regarding § 87(2)(b)'s 50H hearing was sent on July 12, 2016, but there has been no response (BR 01, 02).
- § 87(2)(b) § 87(2)(c)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s and § 87(2)(b)'s first CCRB complaint (BR 05, 06).
- PO Smith has been a member of the NYPD for one year. This is his first CCRB complaint.
- PO Scrapper has been a member of the NYPD for six years. This is his first CCRB complaint.
- PO Schumacher has been a member of the NYPD for six years. PO Schumacher has been the subject of 24 allegations stemming from seven cases. In CCRB 201204235, a force allegation and an entry allegation were substantiated, for which the CCRB recommended charges. He was also cited for a false official statement in that same case. In CCRB 201401515, PO

Schumacher was cited for failure to prepare a memo book entry. In 201506191, a discourtesy allegation was substantiated, for which the CCRB recommended command discipline. In CCRB 201510169, PO Schumacher was cited for failing to prepare a memo book entry and for failure to prepare a stop and frisk report. Although PO Schumacher has an extensive CCRB history, § 87(2)(g)

Potential Issues

- § 87(2)(b) s lawyer advised § 87(2)(b) not to sign any HIPAA forms, so the investigation was unable to request the ACR or any medical records related to this incident.
- A subpoena was sent to FDNY requesting that they identify the EMTs that responded to the location; however, FDNY refused to comply with the subpoena because there was no signed HIPAA form and they did not want their personnel speaking about any of the patients' medical condition without a signed form.
- § 87(2)(b) daughter and a witness to the incident, provided a brief statement but did not want to participate in the investigation and refused to provide contact information for any other potential witnesses to the incident.
- Contact attempts to § 87(2)(b) as well as to potential witnesses, were unsuccessful.

Findings and Recommendations

Explanation of Subject Officer Identification

- Although PO Schumacher denied doing so, § 87(2)(b) identified PO Schumacher as the officer that pushed her when she initially filed the complaint. During her in-person statement, § 87(2)(b) also provided a photograph of PO Schumacher taken during the incident. § 87(2)(g)
- PO Smith and PO Scrapper were identified as the first unit to respond to the location via the roll call and the Event Information documents, and were the first officers to enter the apartment. § 87(2)(g)

Allegations Not Pleaded

- **Force:** During her phone statement, § 87(2)(b) alleged that officers used excessive force against § 87(2)(b) to the point that her shoulder was dislocated. § 87(2)(b) did not provide a verified statement, and no other witnesses alleged that force leading to an injury was used against § 87(2)(b). Furthermore, the Notice of Claim makes no mention of § 87(2)(b) having been injured, all of which suggests that § 87(2)(b) did not sustain any injuries as a result of officers handcuffing her and transporting her to the hospital. Therefore, no allegations of excessive force against § 87(2)(b) are being pleaded, and any allegations of force used during § 87(2)(b) handcuffing have been subsumed under the forcible removal to the hospital allegation.
- **Force:** § 87(2)(b) also alleged that an officer grabbed her by her hair during the incident. Although § 87(2)(b) alleged force, she did not provide a verified statement and she indicated that she did not want to participate with the investigation. § 87(2)(b) the only civilian who provided a verified statement, did not make any allegations regarding § 87(2)(b). Therefore, a force allegation on § 87(2)(b) behalf has not been pleaded.

Allegation A – Abuse of Authority: Police Officer Robert Smith entered § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: Police Officer Darrell Scrapper entered § 87(2)(b) in Brooklyn.

It is undisputed that PO Smith and PO Scrapper entered § 87(2)(b) after EMS requested an RMP to the location.

§ 87(2)(b) stated that she called 911 for an ambulance because her sister, § 87(2)(b) was suffering from a “very large” headache. Approximately fifteen minutes after, three EMTs arrived to the location and entered the apartment. Soon after, § 87(2)(b) informed the EMTs that she did not want to go to the hospital, but it seemed to § 87(2)(b) that the EMTs were trying to force § 87(2)(b) to go. After § 87(2)(b) refused to go to the hospital, the EMTs requested officers to the location. Soon after, two to ten officers arrived to the residence, allegedly “slammed” the door open, and entered. The front door was closed, but unlocked, when the officers entered. Neither § 87(2)(b) nor any of relatives inside, allowed the officers inside. § 87(2)(b) acknowledged that she had difficulty remembering the details of the incident due to the injury she allegedly sustained. At the time of the officers’ arrival, the following family members were inside the residence: her brother, § 87(2)(b) her nephew, § 87(2)(b) her niece, § 87(2)(b) § 87(2)(b) and her sister-in-law, § 87(2)(b) § 87(2)(b) (BR 07).

PO Smith testified that he and PO Scrapper received a radio call regarding an EDP § 87(2)(b) at § 87(2)(b), which was apparently called in by her sister, § 87(2)(b). Upon arrival, EMS was already at the scene. The front door to the residence was ajar, so PO Smith and PO Scrapper walked in. PO Smith found § 87(2)(b) and the EMTs inside a bedroom to the left of the entrance. PO Smith also believed that there were two additional adults and two children in the residence, but they did not speak English (BR 08). PO Scrapper testified that he and PO Smith received an aided call to § 87(2)(b) at approximately 4:11 a.m. that did not require an RMP to the scene. Soon after, the officers received a call from EMS requesting an RMP to the same location. PO Scrapper could not recall whether a family member or an EMT allowed them to enter the residence. After entering, PO Scrapper observed § 87(2)(b) and the EMTs inside a bedroom. He could not recall whether there were additional civilians inside the residence. PO Scrapper also recalled an EMS supervisor being at the scene (BR 09).

The 911 recording determined that § 87(2)(b) requested an ambulance for her sister because she was in a lot pain and had a headache. During the call, a faint wail can be heard in the background (BR 10). The Event Document noted that EMS was called to the location by § 87(2)(b) because § 87(2)(b) complained of being “in a lot of pain.” The job came over as a serious ambulance case. At 3:37 a.m., EMS was on scene. At 4:04 a.m., EMS requested an RMP to the location because § 87(2)(b) was being uncooperative. PO Smith and PO Scrapper arrived to the location at approximately 4:44 a.m. (BR 11).

A warrantless entry into a residence is presumed unconstitutional. Exceptions to this rule include circumstances of consent, emergencies, exigent circumstances, and hot pursuit. There are three elements to determine whether any entry is justified under an emergency exception: the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, the search must not be primarily motivated by intent to arrest and seize evidence, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or the place to be searched. People v. Dallas, 8 N.Y.3D 890 (2007) (BR 12).

It is clear that the officers responded to the location because EMTs requested their presence.

§ 87(2)(g)

Allegation C - Abuse of Authority: Officers forcefully removed § 87(2)(b) to the hospital.

It is undisputed that officers forcefully removed § 87(2)(b) to § 87(2)(b).

§ 87(2)(b) stated that her sister was generally calm with EMS but eventually began to cry. Two officers then entered a bedroom that contained § 87(2)(b) who was in bed at the time. An officer then allegedly got on top of § 87(2)(b) twisted her thumb, and then placed her in handcuffs. § 87(2)(b) also stated that her family remained calmed while this occurred (BR 08).

§ 87(2)(b)'s sister-in-law, stated in her unverified phone statement that an ambulance was called for § 87(2)(b) because she was feeling unwell. Two paramedics arrived to the location, but they were having trouble with § 87(2)(b) because she did not want to go to the hospital, so officers were called to the location (BR 20). In an unverified phone statement, § 87(2)(b) stated that § 87(2)(b) had called an ambulance for her mother because she was suffering from a migraine; however, § 87(2)(b) felt better by the time that the EMTs arrived and did not want to go to the hospital. Afterward, the EMTs called 911 and approximately 25 officers arrived to the location. The officers were told that § 87(2)(b) was fine, but the officers allegedly stated that they needed to take her to the hospital because they “were spending government money” for her. An officer then reached and grabbed § 87(2)(b) by the arm and detained her, after which she sedated (BR 13).

PO Smith testified that he was informed by EMS that § 87(2)(b) had been behaving strangely – they found her rolling around on the floor and laughing – and that she needed to go to the hospital for medical attention. PO Smith did not observe the behavior described by the EMTs while at the location. Because § 87(2)(b) did not want to go to the hospital and because she did not speak English well, § 87(2)(b) was called via telephone. After 20 minutes, § 87(2)(b) arrived, “heavily intoxicated,” with her boyfriend, but she only made the situation worse. PO Smith emphasized that § 87(2)(b) was not considered to be under arrest, but she needed to be placed in handcuffs so that EMS could sedate her. PO Scrapper went to place § 87(2)(b) in handcuffs, but she resisted and refused to give up her arms, so PO Scrapper placed her on the bed and managed to get her hands together. Immediately after, EMS administered a sedative. PO Smith confirmed that § 87(2)(b) was removed to the hospital because of EMS’s assessment. After § 87(2)(b) was sedated, she was brought outside, placed in an ambulance, and transported to § 87(2)(b) Hospital (BR 08).

PO Scrapper testified that he was informed by § 87(2)(b) that § 87(2)(b) had threatened to kill herself or had indicated that she did not want to live. By the time that PO Scrapper was at the scene, EMS and an EMS supervisor had already determined that § 87(2)(b) needed to go to the hospital because she could be a danger to herself; however, § 87(2)(b) was refusing to go. Given the information provided by § 87(2)(b) PO Scrapper considered the situation an EDP job. PO Scrapper explained to § 87(2)(b) that she needed to go to the hospital, but she continued to refuse.

Eventually, § 87(2)(b) was contacted; she arrived after 20 minutes, intoxicated. After speaking with her mother, § 87(2)(b) stated that her mother did not need to go to the hospital. PO Scraper continued to emphasize that § 87(2)(b) needed to go, and he told § 87(2)(b) to walk out willingly or else he would need to place her in handcuffs and escort her out. § 87(2)(b) continued to refuse, and § 87(2)(b) daughter was becoming agitated, so PO Scraper and PO Smith decided to place § 87(2)(b) in handcuffs. PO Scraper grabbed § 87(2)(b) left wrist and put a handcuff around it, at which point, § 87(2)(b) daughter attempted to get involved and “jumped” on PO Scraper’s back. PO Smith removed § 87(2)(b) daughter from PO Scraper and held her back. The daughter’s boyfriend also attempted to get involved by pulling on PO Scraper, but EMS personnel held him back. While this was occurring, PO Scraper requested additional units to the location. § 87(2)(b) resisted being handcuffed by moving her body around. § 87(2)(b) was placed onto the bed, where PO Scraper managed to fully contain her. EMS then administered a sedative to § 87(2)(b). § 87(2)(b) had exited the room prior to officers’ attempt to handcuff § 87(2)(b) (BR 09). In the radio call for backup placed by PO Scraper, arguing can be heard in the background. (BR 22).

Sgt. Martinez testified that he received a call for back up in regards to an EDP at the location, and he recalled hearing some screaming in the background. Upon arrival, he went to the bedroom and observed uniformed officers and EMTs attempting to restrain § 87(2)(b). She was placed on the bed and was handcuffed. § 87(2)(b) resisted being handcuffed by yelling, screaming, and fidgeting around. Sgt. Martinez did not know why § 87(2)(b) needed to be restrained, but he also explained that it is standard procedure to restrain EDPs when taking them to the hospital. Afterward, one of the uniformed officers requested that the other civilians be removed from the room and from the apartment (BR 14). PO Schumacher corroborated that the scene inside the apartment was chaotic and that family members of § 87(2)(b) were attempting to interfere and enter the bedroom (BR 21). None of the other officers interviewed for this case recalled observing § 87(2)(b) being placed in handcuffs; however, Sgt. Steven Siermala and PO Jonathan McMilleon noted that the call for backup was in regards to an EDP and Sgt. Siermala described a chaotic scene outside the apartment due to § 87(2)(b) family being upset that she was being taken to the hospital (BR 15, 16).

When officers come into contact with a person who is sick or injured, medical aid must be rendered to that person. If there is a difference of opinion between the aided, the aided’s family, and EMS as to whether the aided person should go to the hospital, an EMS supervisor and a patrol supervisor must be requested to make a decision. NYPD Patrol Guide, Section 216-01 (BR 17). If a person is a dangerous to themselves or others, necessary force may be used to prevent serious physical injury or death. Physical force will only be used to the extent necessary to restrain the subject until delivered to a hospital. NYPD Patrol Guide, Section 216-05 (BR 18).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D – Force: Police Officer William Schumacher used physical force against § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer William Schumacher attempted to interfere with § 87(2)(b)'s use of a recording device.

In § 87(2)(b)'s in-person statement, she alleged that she wanted to record the incident, so § 87(2)(b) allegedly handed her a cellphone. As soon as she was going to begin to record, PO Schumacher allegedly grabbed her by the arms and pushed her back. The force of the push allegedly caused § 87(2)(b) to fall back onto a stove, hit the back of her head, and lose consciousness. § 87(2)(b) denied that PO Schumacher issued her any commands prior to the alleged push, and she had not interacted with him in any capacity prior to being pushed. § 87(2)(b) awoke later in § 87(2)(b), and she was informed by family members that she was transported in the same ambulance as her sister. § 87(2)(b) alleged that she sustained internal injuries in her head and that she now has back pain. § 87(2)(b) also provided a photograph of PO Schumacher during her interview, which she alleged was taken during the incident by § 87(2)(b) (BR 08). In her original complaint at the 75th Precinct stationhouse, the written narrative section stated that § 87(2)(b) went to give her phone to her niece, but PO Schumacher grabbed her by the arms and pushed her, after which, she lost consciousness.

In her unverified phone statement, § 87(2)(b) stated that she observed when an officer pushed § 87(2)(b) as § 87(2)(b) was being removed from the residence in a chair. § 87(2)(b) wanted to give § 87(2)(b) her phone, so § 87(2)(b) went to grab it, but an officer pushed her back and she fell to the floor (BR 20). § 87(2)(b) briefly mentioned that § 87(2)(b) was pushed during the incident, causing her to fall to the floor and to suffer “some type of concussion.” She also mentioned that she had a video of “everything” that occurred, and that she provided it to § 87(2)(b)'s lawyer (BR 13).

PO Schumacher testified that he was on patrol with Sgt. Martinez when they received a call for back up at the location. When they entered the home, they observed three to ten officers and approximately five civilians inside the home. Inside the room that contained § 87(2)(b) was § 87(2)(b) and several officers. There were also two civilians in the living room. § 87(2)(b) was jumping on the bed, yelling, cursing, and “swatting” the officers’ hands away. Some of the civilians outside the bedroom also attempted to walk past him and the other officers into the room, but they were prevented from doing so. PO Schumacher was shown a photograph of § 87(2)(b) and he recognized her as one of the civilians outside of the room. § 87(2)(b) was also yelling during the incident, but PO Schumacher did not understand what she was saying because it was in Spanish. At one point, § 87(2)(b) also attempted to get inside the room, but PO Schumacher prevented her from doing so by standing in front of her. PO Schumacher also believed that everyone inside the residence was “heavily intoxicated” because they had unsteady gaits, bloodshot eyes, breaths that smelled like alcohol, and slurred speech. Several of the civilians were yelling and not listening to commands. An officer pointed out a male as “the aggressor” and asked PO Schumacher to escort him outside, which he did without incident or resistance. Soon after, several of the officers and the civilians came outside. PO Schumacher believed that § 87(2)(b) also exited the residence and attempted to record the incident. PO Schumacher denied that he, or any other officer, attempted to prevent § 87(2)(b) or any other civilian, from recording the incident. PO Schumacher denied that he, or any other officer, pushed any of the civilians at the location. PO Schumacher did not observe any civilians on the ground, he did not observe any injured civilians, and no civilians complained of any injuries. PO

Schumacher never became aware of anyone losing consciousness at the location. PO Schumacher did not know whether § 87(2)(b) was the only person transported to the hospital (BR 21).

PO Smith, PO Scraper, Sgt. Martinez, and PO Alexander Yanez all corroborated that the situation inside was chaotic and noted that § 87(2)(b) was on top of the bed at one point. Both PO Scraper and PO Smith also recognized § 87(2)(b) when shown her photograph, but they denied that they observed an officer push her, and they did not see her on the ground and they did not see her lose consciousness. They also did not see anyone attempting to record the incident, nor any officer attempting to prevent someone from recording (BR 08, 09, 14, 19). All of the officers interviewed for this case denied that any civilian was prevented from using a recording device, pushed, or lost consciousness at the location.

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g), § 87(2)(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: _____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date